

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS DEVELOPMENT)
FINANCE AGENCY)
Plaintiff,)

v.)

C.A. No. 04 CV 10203 PBS

ADP MARSHALL, INC., a FLUOR)
DANIEL COMPANY, and FIREMAN'S)
FUND INSURANCE COMPANY)
Defendants.)

ADP MARSHALL, INC.)
Plaintiff-in-Counterclaim,)

v.)

MASSACHUSETTS DEVELOPMENT)
FINANCE AGENCY)
Defendant-in-Counterclaim.)

ADP MARSHALL, INC.)
Third Party Plaintiff,)

v.)

ALLIED CONSULTING ENGINEERING)
SERVICES, INC., ANDOVER CONTROLS)
CORPORATION, R&R WINDOW)
CONTRACTORS, INC., DELTA)
KEYSPAN, INC. n/k/a DELTA)
KEYSPAN, LLC, MADDISON)
ASSOCIATES, INC., UNITED STATES)
FIDELITY AND GUARANTY)
COMPANY, FIDELITY AND DEPOSIT)
COMPANY OF MARYLAND,)
NATIONAL GRANGE MUTUAL,)
INSURANCE COMPANY, TRAVELERS)
CASUALTY AND SURETY COMPANY)

OF AMERICA, AMERICAN HOME)
ASSURANCE COMPANY,)
HARTFORD ROOFING COMPANY, INC.)
and SPAGNOLO/GISNESS &)
ASSOCIATES, INC.)
Third Party Defendants.)
_____)

AFFIDAVIT OF TOM HUGHES

I, Tom Hughes, hereby certify upon personal knowledge and under the pains and penalties of perjury as follows:

1. I am an employee of ADP Marshall, Inc. ("ADPM"), the Third Party Plaintiff in the above entitled action.
2. On or about September 7, 2000, ADPM and the Massachusetts Development Finance Agency ("MDFA") entered into a contract ("Contract") for the construction of an Advanced Technology and Manufacturing Center in Fall River, Massachusetts ("Project").
3. On or about January 19, 2001, ADPM and Delta Keyspan, Inc. ("Delta") entered into an agreement whereby Delta would install the HVAC system of the Project ("Delta Agreement"). Attached hereto as Exhibit 1 is a true and correct copy of the Delta Agreement.
4. Delta was required to furnish and install, by way of example and not limited to, all sheetmetal, HVAC piping, all AHU's chillers, all heating coils, all H&V units, all fintube radiators, the complete glycol energy recovery system, all pumps, all VAV boxes, boilers, unit heaters, all exhaust fans and all exhaust ducting. See Exhibit 1, Delta Agreement - Schedule of Work, ¶ 18.
5. Delta agreed, pursuant to paragraph 2.1 of the Delta Agreement, to perform the Subcontract Work in accordance with the Contract Documents, the Schedule of Documents and with all the skill and care consistent with the performance of such Work in the construction industry and according to usual construction industry practices. See Exhibit 1, Delta Agreement, ¶ 2.1.
6. Delta furnished and installed the HVAC system for the Project, not limited to, air handling units, sheet metal duct work, VAV boxes, unit heaters, H&V units, and the heat recovery system.

7. By letter dated September 6, 2002, William Whelan of Whelan Associates, LLC, an apparent agent for the MDFA, notified Robert Greetham of ADPM of concerns the MDFA had with the Project. Attached hereto as Exhibit 2 is a true and correct copy of the September 6, 2002 letter from William Whelan.
8. On or about November 18, 2002, ADPM forwarded Mr. Whelan's September 6, 2002 letter to Delta for response and action.
9. On January 26, 2004, ADPM notified Delta of the MDFA's Complaint and requested indemnification since there were allegations concerning the HVAC installation. Attached hereto as Exhibit 3 is a true and correct copy of the January 26, 2004 letter to Delta.
10. In or about June 2004, the MDFA provided ADPM with a copy of its HVAC expert report dated April 9, 2003. Attached hereto as Exhibit 4 is a true and correct copy of the April 9, 2003 HVAC expert report.
11. Many of the MDFA's concerns, raised in its Complaint, relate to the installation of the HVAC system, such work being performed by Delta pursuant to the Delta Agreement.
12. ADPM has requested, and Delta has failed to offer or provide, defense, indemnification and reimbursement of attorney fees, as it relates to the MDFA's HVAC installation concerns.

Signed and sworn to under the pains and penalties of perjury this 24 day of November 2004.



Tom Hughes
ADP Marshall, Inc.

STATE OF RHODE ISLAND

Then appeared before me Tom Hughes and upon verification of his identity by a valid drivers license attested to and signed the foregoing in his own hand this 24 day of November, 2004.



Notary Public

My Commission Expires 06/19/15